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THE GOVERNMENT AND THE TELEGRAPH.

MANY persons and not a few influential journals are now advocating a government telegraph. This proposition involves the consideration of both the power and the policy of our Government undertaking this important commercial function. Can the Government acquire, own, and operate a general system of telegraphy for commercial uses under the limited powers of the constitution? If so, is there any necessity for, or probable advantage to be derived from, such undertaking by the Government? And are there not grave political reasons why the Government should not assume and control this important medium of ready and rapid communication? These questions will form the subject of the present article.

POWER.—Although European governments have monopolized the telegraph within their respective dominions, except for oceanic cable service, it does not necessarily follow that the United States may lawfully do so. Ours is a constitutional government; and the very object of the constitution is to define and limit its powers and duties. In fact, the constitution is a compact or charter enacted by the several States, by virtue of which the Government of the United States was created and established, and under which it still exists.

There is much clamor throughout the country and in the public journals about the abuse of charter powers; and the tendency of the courts is to rule a strict construction and rigid limit to the powers clearly granted. If the same rigid observance of constitutional limitations had been demanded of the Government there would have been no occasion for the general outcry against the extravagant appropriations of the last Congress.

Articles IX. and X. of the amendments to the Federal constitution read as follows :

“IX. The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

“X. The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

These amendments are among those which were proposed by enactment of the first Congress that assembled, and were evolved in the discussions of the ratification of the original instrument by the legislatures of the several States. They may be regarded as the understood conditions upon which the Government was constitutionally established ; and therefore they distinctly exhibit the intent and purpose of its creators to restrict the powers of the Government strictly within the limits fixed by the constitution.

Now, the grants of power under which it is claimed that the Government may assume and control that great right hand of commerce, the telegraph, must be read in the light of these restraining articles. They are two grants in Section 8 of Article I., and are as follows :

“To establish post-offices and post-roads.

“To regulate commerce with foreign nations and among the several States and with Indian tribes.”

If the power is assumed under the postal grant, then the most the Government can do is to hire the transmission of messages taken at and delivered from the post-offices, as it hires the carrying of mails by contract on the best terms it can make. The Government does not carry the mails. It hires others to carry them, and has always done so. It has never claimed the power to build or own railroads, or steam-boats, or even stage-coaches, or to appoint employés for their operation, to carry on the postal service. But it is now assumed that the Government may build or own a telegraph, equip it for operation, and employ a numerous staff of officers and agents for its commercial service, thus exercising powers that no one has ever claimed that it possesses in respect to the postal service.

The striking brevity and concise language of that grant tell the whole story as to the limitation of power it was intended to

define. There were neither railroads, nor steam-boats at the date of its enactment. The mails were carried chiefly by stage-coaches and, in the more sparsely settled parts of the country, on horseback. But there were some people then, as there are now, who thought the Government should own the stage-coaches, horses, and equipments, and appoint the officers and agents to operate them. The stage-coaches, however, must carry passengers, and this was a traffic in which the Government could not properly engage; and as this traffic was, on most lines, itself a source of profit, and as the Government would probably not conduct the business as economically, or as energetically, as individual or corporate enterprise, it was considered far better that the Government should have the mails carried by contract than that it should undertake the joint business of carrying mails and passengers. Hence the very restricted concession of power, "To establish post-offices and post-roads." Such had been the result of experience in the mother country; and now, a hundred years later, the same principles apply with equal force to the telegraph, should the Government determine to go into the business at all.

But the telegraph is not a postal service. It does not transport sealed packages, or original communications; nor is it by any means so generally used by the people. Many points of marked dissimilarity might be noted; but as the whole subject of the nature of the telegraph has been repeatedly defined and adjudicated by the Supreme Court, the authority of that high tribunal must settle the question.

In the case of the Western Union Telegraph Company *vs.* The State of Texas (105 U. S., 464), Chief-Justice Waite, in rendering the decision of the court, said:

"In *Pensacola Telegraph Company vs. Western Union Telegraph Company* (96 U. S., 1), this court held that the telegraph was an instrument of commerce, and that telegraph companies were subject to the regulating power of Congress in respect to their foreign and interstate business. A telegraph company occupies the same relation to commerce, as a carrier of messages, that a railroad company does as a carrier of goods. Both companies are instruments of commerce, and their business is commerce itself. They do their transportation in different ways, and their liabilities are, in some respects, different, but they are both indispensable to those engaged to any considerable extent in commercial pursuits."

The decisions of the Supreme Court establish the law of the land; and are as binding upon each and every department of

the Government as upon the humblest citizen. Here, then, are two important decisions (including the one cited by the Chief-Justice) which define the telegraph to be so essentially a part of commerce that "its business is commerce itself." If it is commerce itself it can not be postal, any more than the railroads that carry the letters are postal. The power must, therefore, be looked for in the clause giving Congress "power to regulate commerce with foreign nations and among the States." And here, again, we have these two important decisions above referred to, defining the extent of that power. It was held that "the telegraph companies were subject to the regulating power of Congress in respect to their foreign and interstate business." This is a very important limitation of the power of Congress in the premises. It exists only "in respect to their foreign and interstate business."

With the exception of less than half a dozen great commercial centers, more than half the business of any telegraph station is done with offices within a radius of one hundred miles. Take such a station as Columbus, the capital of Ohio, or any other considerable town in the interior of any of the larger States, and more than half its business is done entirely within the State. As to business of this class, the Supreme Court has held that it is not even "subject to the regulation of Congress."

But the power to regulate does not mean, and was never intended to mean, the power to own the plant and carry on a commercial business between the States; and much less to conduct a local traffic within a State. The reservation of the power to regulate commerce among the States grew out of the apprehension that States might impose improper burdens or restrictions on traffic with other States. It was not enough to say that "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports," etc.; but lest there might be imposed some other form of tax or hinderance, and in order that trade between the States should be maintained free and without incumbrance, Congress was given this supervisory power to "regulate commerce among the States."

If the Government can appropriate the telegraph and enter upon commercial traffic in this important branch of business, it may also assume to own the railroads and carry on railroad traffic; and if the railroads, then also the warehouses and grain elevators; and if these, why not the flour mills, and, with infinitely more public benefit, the bakers' shops also? For every one

of the fifty-two millions of people is personally interested in the supply and low price of bread, while there are not half a million in the whole population that ever did use the telegraph.

It is not believed, and has never been judicially held, that this power to "regulate commerce among the States" goes so far as to authorize Congress to fix the price as between buyer and seller; and the business of railroads and telegraphs has been judicially held to be commerce. Therefore, Congress has never assumed to fix the rates of tolls or charges for transportation of freights or passengers, or for the transmission of messages; and in the act of 1866 it only assumed the power to fix the rates for Government messages by a contract with the telegraph companies. The power to regulate is precisely power to prevent unjust discriminations against a fair and open competition.

The further grant of power in the eighth section of the first article of the constitution, "To make all laws which shall be necessary and proper to carry into execution the foregoing powers," etc., cannot be drawn upon unless the power is found to exist. But, if it be determined that the Government shall enter upon a public telegraph service, then it has acquired the right and is under obligation to take the existing telegraph properties in the country at valuation, as provided in the act of 1866, nearly, if not quite, all the existing telegraph companies having accepted the provisions of that act. This act of Congress was quoted entire in the case of the *Pensacola Telegraph Company vs. The Western Union Telegraph Company* (96 U. S., 1), and was held to be "a legitimate regulation of commercial intercourse among the States." It is in the nature of a compact, requiring the acceptance of the telegraph companies, and is as follows, to wit:

"An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that any telegraph company now organized, or which may hereafter be organized, under the laws of any State in this Union, shall have the right to construct, maintain, and operate lines of telegraph through and over any portion of the public domain of the United States, over and along any of the military or post roads of the United States which have been or may hereafter be declared such by act of Congress, and over, under, or across the navigable streams or waters of the United States: Provided, that such lines of telegraph shall be so constructed and maintained as not to obstruct the navigation of such streams and waters, or interfere with the ordinary travel of such military or post

roads. And any of said companies shall have the right to take and use from such public lands the necessary stone, timber, and other materials for its posts, piers, stations, and other needful uses in the construction, maintenance, and operation of said lines of telegraph, and may preëempt and use such portion of the unoccupied public lands subject to preëmption, through which its said lines of telegraph may be located, as may be necessary for its stations, not exceeding forty acres for each station; but such stations shall not be within fifteen miles of each other.

"SEC. 2. And be it further enacted, that telegraphic communications between the several departments of the Government of the United States and their officers and agents shall, in their transmission over the lines of any of the said companies, have priority over all other business, and shall be sent at rates to be annually fixed by the Postmaster-General.

"SEC. 3. And be it further enacted, that the rights and privileges hereby granted shall not be transferred by any company acting under this act to any other corporation, association, or person: Provided, however, that the United States may, at any time after the expiration of five years from the date of the passage of this act, for postal, military or other purposes, purchase all the telegraph lines, property, and effects of any or all of said companies at an appraised value, to be ascertained by five competent disinterested persons, two of whom shall be selected by the Postmaster-General of the United States, two by the company interested, and one by the four so previously selected.

"SEC. 4. And be it further enacted, that before any telegraph company shall exercise any of the powers or privileges conferred by this act, such company shall file their written acceptance, with the Postmaster-General, of the restrictions and obligations required by this act." 14 Stat., 221; Rev. Stat., sec. 5263 *et seq.*

The provisions of this act have as yet been of very little benefit to the telegraph companies, while the obligations they have assumed in accepting the act have been very onerous. The rates for government service have been reduced by the Postmaster-General from time to time under the provisions of the act, until government messages are transmitted at an absolute loss to the telegraph companies. The government service, including meteorological reports, requires the preferential use, several times per day, of over thirty thousand miles of wire; and all government messages have precedence of all other business as stipulated in the act. This very exacting service is required to be performed at rates of toll below the average cost to the companies of handling their entire business.

Government can do business at a loss by increasing taxation to make up that loss; and has not hesitated to do the postal service at great loss to meet the public outcry for cheap postage. It is scarcely conceivable that any government would do an act

of such great injustice, to so large a portion of its citizens and to many citizens of other countries, who own the existing telegraph properties, as to establish a competing telegraph system to the detriment, or destruction, of the value of existing investments. Besides, the Government would labor under great embarrassments; for though the Morse patents have expired, all the best forms of telegraph instruments, batteries, and other appurtenances are protected by more recent patents, which the Government has no more right, than any citizen or corporation, to use without the consent of the owners. And this has been distinctly held by decision of the U. S. Circuit Court for the Southern District of New York, in the case of *Campbell vs. James*, for infringement in the use of a canceling stamp in the New York Post-office.

Now, the faith of Congress having been pledged in the act of 1866, which has been accepted by the telegraph companies, and by them faithfully observed for over sixteen years, at great cost to their revenues, the conclusion is forced upon any fair-minded man that, if the Government shall determine to assume the telegraph business at all, it can rightfully do so only by recognizing the act of 1866 as a contract, and electing to take existing properties and franchises in the form and manner and on the terms and conditions fixed by the provisions of the act of 1866.

Another reason for taking existing properties is, that whatever business the Government does, it must do it to the exclusion of other agencies; otherwise, the Government would either have to do business at a loss or be badly beaten by private enterprise. Chief-Justice Waite, in the decision in the Pensacola telegraph case, before quoted from, says: "It is not necessary now to inquire whether Congress may assume the telegraph as part of the postal service, and exclude all others from its use." This significant language of the court, while it implies a doubt whether Congress has the power, plainly indicates that, if the telegraph be assumed, it must be to the exclusion of all other competitors. And such has been the example of all the governments that own and operate the telegraph. The same doubt of power is expressed in the dissenting opinion of Justices Field and Hunt, in the same case, in a more significant form. They say: "We are not called upon to say that Congress may not construct a railroad as a post-road, or erect for postal purposes

a telegraph line." This implies what they would say if they were called upon to adjudicate that question.

POLICY.—The question of public policy naturally divides itself into those of necessity and expediency. If it can be shown that the telegraph in this country, under individual and corporate management, is, in most respects, far ahead of the system in any other country; and that the public have a better, more prompt, and more generally accurate service, and at lower rates, taken as a whole, than is rendered by any government administration of the telegraph, then there is no public necessity for government intervention in the premises.

And if no such necessity exists, and it be reasonably shown that the service would not probably be so good under a government administration, and would not probably command the undivided confidence of all parties desiring to use it to the same extent; and if it be further shown that the telegraph is capable of great abuse for political purposes in the hands of any party that may happen to be in power, then it may be fairly concluded that it is inexpedient for the Government to intervene.

WIRE AND OFFICE FACILITIES.—It will be sufficient to compare the facilities for telegraph business in this country with those of the four leading countries of Europe most advanced in the science and use of the telegraph. The mileage of telegraph lines in these countries is as follows :

In Great Britain	23,000 miles.
In Germany	41,000 "
In France	36,000 "
In Austria and Hungary	30,000 "
In the United States	180,000 "

It will be seen that there have been established in the United States, by private enterprise, about fifty thousand miles of telegraph lines in excess of the aggregate mileage in all these great European countries. On the lines in the United States there are about 500,000 miles of wire, which is believed to be as greatly in excess of that in the countries named as the excess in mileage of lines. The population of the four countries named aggregates about 150,000,000, and that of the United States is about 52,000,000. While there is, therefore, an average of less than one mile of line for each 1000 of population in Europe, the

people of this country have nearly a mile of line for each 300, and nearly a mile of wire for each 100 inhabitants. A comparison with each country separately would be about as favorable, Great Britain being somewhat in advance of the others.

There are in the United States about 14,000 telegraph stations, against 5700 on the British postal lines. In this country there is a telegraph office for each 3700 of population, while in Great Britain there is only a station for each 6700 souls. The proportion of offices kept open all night and Sundays is also very much larger in this country. This comparison demonstrates that, in wire and office facilities for conducting the business of telegraphy, the people of this country have a very great advantage over those of any country having a government telegraph system.

In the last report of the British post-office administration accessible to the writer, the progress made in ten years under government control was noted with not a little pride. The increase presented was: in miles of line, 17,507; in miles of wire, 51,861; in number of offices, 2843; and in number of messages, 20,017,147. In ten years ending with June, 1882, one company in this country shows an increase of 69,027 miles of line; 237,178 miles of wire; 6831 in the number of offices; and 26,379,748 in the number of messages. Thus the progress of a single company in this country shows a growth in one decade fourfold greater than that of the British postal system in length of lines; nearly fivefold greater in length of wire; more than twofold in additional offices, though the increase in the number of messages was only twenty-five per cent. greater than in Great Britain. The result is precisely what might have been expected—that the telegraph having kept pace in this country with the growing demand for its use, and the increased exactions for prompt transmission, there is a very much better service rendered in this country than under any government administration.

SERVICE.—Mr. Hueston, for many years connected with the telegraph service of the New York Associated Press, and who has probably sent and received more telegrams than any other patron of the business, says:

“It has been enforced upon my conviction by twelve years of intimate acquaintance with the business in America, and six years of continuous experience in the same business in Europe, that the average time of trans-

mission on the Western Union Company's lines is shorter than on any system in Europe, or in any country in Europe; and that the number of errors made by American operators is much smaller than by European operators; and, in these respects and all others connected with the practical part of the telegraph service, the private companies have made steady and continuous improvement, while the tendency in Europe is to stagnate or to retrograde."

He adds, from the result of his large experience:

"Commercial messages of ordinary length, in the busy time of the day are about two hours between Paris and London offices, exclusive of time of delivery. Between Antwerp or Brussels and London, about the same delay. Between Bremen or Hamburg and London, the time is about one hour. These are short and mostly single circuits, the delay arising entirely from meagerness of facilities. The average time between New York and London is far quicker than between Paris and London. A week's business, taken at random from messages transmitted by day and by night, yields the following results, the time in every case being the difference between time of filing and time of receipt on the instrument in London: Twenty-three messages from Rome average two hours and forty-three minutes; thirteen messages from St. Petersburg average one hour and fifty-six minutes; twelve messages from Vienna average one hour and forty-six minutes; seven messages from Brussels average one hour and ten minutes; thirty messages from Berlin average one hour and seven minutes; fifty-eight messages from Paris average one hour and one minute; thirteen messages from Amsterdam average fifty-six minutes. Telegrams from Constantinople average about four hours; from Madrid, take anywhere from one to five hours. The messages on which the averages are struck do not vary much from a total of forty words."

What would the commercial people of this country think of that kind of service? The time required for the transmission of messages between the great commercial centers of this country has been reduced to from one to four minutes; and between the great produce exchanges and boards of trade, to fractions of one minute.

In accuracy we are far in advance of the government systems. In this country, complaints of errors and mishaps average one for every five thousand messages sent, or the fiftieth part of one per cent.; while one scarcely ever receives a message on the other side of the Atlantic that has not some "error," requiring a guess at the word intended. Complaints are unavailing, as governments acknowledge no responsibility. Some months ago, a writer in "Blackwood's Magazine" filled ten pages with samples of errors on the European lines which had fallen under his observation; and the London "Times," in a lengthy article

declared the Government telegraph a failure, and pointed out the great want of accuracy and lack of public accommodation. Nearly all the great inventions and improvements in the art of telegraphy, within the past thirteen years, have been made in this country and under the stimulus of private enterprise.

RATES OF TOLLS.—There is no greater mistake than the popular declaration that telegraphing is very much cheaper in Europe than in this country. On the contrary, it is very much more expensive. The minimum rate of one shilling in Great Britain, and a sum in other European States equal to about twenty-five cents of our money, for messages between all points within each country, carries a very small volume of business a little greater distance than it can be transmitted here at as low a rate. But there is a considerable telegraph business done in this country at a ten-cent rate and a larger amount at a rate of fifteen cents; while for long distances the rates in this country are very much lower than in any part of Europe. The following table exhibits the rates per word from London to the several countries enumerated:

Austria.....	700	miles,	9	cents	per	word.
Belgium.....	200	"	4	"	"	"
Denmark.....	500	"	8	"	"	"
France.....	200	"	5	"	"	"
Germany.....	500	"	6	"	"	"
Holland.....	200	"	6	"	"	"
Italy.....	800	"	10	"	"	"
Norway.....	700	"	8	"	"	"
Roumania.....	1200	"	10	"	"	"
Russia in Europe.....	1400	"	18	"	"	"
Switzerland.....	400	"	8	"	"	"
	6800	"	92	"	"	"

Paris is about the same distance from London that Boston is from New York. We charge for a message between New York and Boston (and indeed all points in New England) twenty-five cents, which message with date, address, and signature free, averages seventeen words. A like message between London and Paris would cost eighty-five cents. Vienna is about the same distance from London as Chicago from New York, between which latter points our rate is fifty cents. From London to Vienna, a like message would be \$1.53. To St. Petersburg, which is about

the same distance from London, that Omaha is from New York, the message would cost \$3.06 against our rate of seventy-five cents.

The maximum rate in this country for carrying a message from Halifax, N. S., to Washington Territory, a distance of 4000 miles, is \$1.50 for an average of seventeen words. It is difficult to find a comparable service in Europe that does not pass through long cables belonging to private companies; but the government land rates united would be four times as much as our rate. All international messages are charged at word rates, which are much higher for long messages than the combined local rates. Hence there does not appear any reason for public complaint of the cost of telegraphy in this country.

One of the strongest arguments for a government telegraph has been that the telegraph system throughout the country should be made a unit, under one general direction. Undoubtedly this would contribute to the improvement of the public service, and yet one of the very grounds of complaint is that one company has done so much toward unifying the telegraph service.

DANGERS.—The argument for the monarchical governments of Europe controlling the telegraph was, that as an element of power it was a great protection against the plots and schemes of disaffected and opposing elements or parties. These elements, threatening the stability of the Government, could not be allowed the advantages of the telegraph, and dare not use it. The peace of society and the prosperity of the country are involved in the stability of the Government and the security of its rulers. The genius of our Government is, that the people rule; it is, therefore, averse to the administrative power, for the time being, having any such advantage in directing or controlling the popular will. The telegraph would not only double the power, by way of patronage, of the Post-office Department, but would give the administration party immense advantages in warmly contested elections. Who can say that sooner or later there would not be an espionage of telegrams instituted? But, even were it administered with the most sacred impartiality and inviolability of the privacy of messages, the opposing party would never believe it was so administered, and would not venture to use it in the private arrangements for the prosecution of the contest.

It is scarcely probable that any administration of the telegraph will ever render entire satisfaction to everybody who uses it. That the government administrations have not done so may be further shown by the following extracts, the first from an article which appeared in the London "Times," and the second from a speech by John Pender, Esq., M. P., whose opinions are entitled to the highest consideration, and whose capacity and opportunities for forming a correct judgment in the premises are equal to those of any man living.

The "Times" article says :

"It can hardly be doubted but that, if the telegraphic wires of the country were in the hands of private companies and were administered by private enterprise, instead of being a government monopoly, the public would gain largely in rapidity, cheapness, and extension of telegraphic communication. It appears more than doubtful whether the monopoly given by Parliament, and the purchase by the Government of the telegraph lines in the United Kingdom, have not proved to be errors, and whether the time will not shortly arrive when the administration of telegraphs should be taken out of the hands of the Government and again intrusted to private enterprise."

Mr. Pender says :

"I have thought it desirable to refer to my visit to America, and say something about the Western Union system, because it is a system which is, probably, in its efficiency, only to be compared with our own system in England, which is worked by the Government, with this difference, that being worked as a private enterprise, and being stimulated more or less by competition, I think the Western Union have shown greater results during the last ten years than our system has under government management. I think the science of electricity has received more encouragement and been more developed, and the reduction of rates has, during that time, also been greater in America than in England; and, altogether, I think it would be well if our Government took a leaf out of the book of the Western Union Company."

It is hoped that the Government and people of this country have not entirely forgotten that sage maxim of President Jackson: "That country is governed best which is governed least."

NORVIN GREEN.